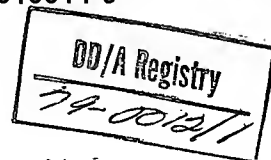


WASHINGTON, D.C. 20505



Legislative Counsel

20 JAN 1979

OLC 79-0114/A

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

DD/A Registry
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Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency on the draft legislation entitled "Classification and Compensation Act of 1979." This bill is a further positive step, following close behind and complementary to the Civil Service Reform Act of 1978, in the President's program to reform the Federal bureaucracy.

In the interests of maintaining essential flexibility, security and complementing the statutorily prescribed responsibility of the DCI to protect intelligence sources and methods from unauthorized disclosure, this Agency has been exempted from a variety of statutory Federal personnel programs. Recently, the Administration and the Congress, as a matter of national security policy, saw fit to exempt this Agency from all of the major provisions of the Civil Service Reform Act for these same reasons. We are pleased that the thrust of this policy is continued in the draft legislation. There are, however, two areas which we believe are in need of perfection or revision.

It is our understanding that section 5301 of Title 5 does not apply to the CIA by virtue of section 3(e) of the bill which incorporates the section 5102 definition of "agency" which specifically excludes CIA. We assume, therefore, that as section 5309(a), being the section by which the President implements the policy and purpose of section 5301, CIA is also exempt from section 5309(a). In order to clarify this we recommend that at page 21, line 21, the term "employee" be inserted both before the words "benefits" and "benefit."

Section 7 of the draft bill would add a new Chapter 50 to Title 5 which under sections 5001 and 5002 could require access by the Compensation Agent and its staff to information pertaining to intelligence sources and methods. Further, any information made so available is subject to

disclosure like a rule-making proceeding which is subject to public notice and comment under the provisions of section 553(a) of Title 5. Moreover, the Compensation Agent and its staff would possess the authority to make personnel recommendations impacting upon the mission and substantive functions of the CIA. Finally, it is implicit in the bill that the Office of Personnel Management would administer any modifications ordered in the pay systems or premium pay or allowance provisions. OPM administration of modifications made under sections 5001 and 5002 would involve continuing access to information pertaining to intelligence sources and methods and could place OPM in the position of affecting CIA substantive functions by its control of the CIA personnel system.

The flexibility of the Director under the broad authority of 50 U.S.C. 403j to operate and adapt the CIA's personnel system in order to meet our unique personnel requirements and the ever-shifting exigencies of foreign affairs would be seriously impaired by sections 5001 and 5002. The CIA must have confidentiality and flexibility in order to carry out its mission and functions successfully. As noted above, this has consistently been and remains the policy of the Administration. Therefore, I recommend that the following amendments, which would serve to recognize the special mission of the CIA, be adopted and included as part of the Administration bill:

Section 5001 be amended by adding under paragraph "(a)" a new subparagraph: "(4) Compensation systems established under section 403j, Title 50 United States Code."

Section 5002 be amended by adding to section 5002(a) after the word "States" the following: ", but does not mean an employee of the Central Intelligence Agency."

In closing, I would like to assure you that it has been the traditional policy of this Agency, consistent with the effective and efficient performance of our mission and responsibilities, to adopt and follow Federal personnel programs which incorporate Government-wide concepts.

I appreciate the opportunity to comment on this draft legislation. Please feel free to contact my office should you desire assistance or further clarification.

Sincerely,

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Frederick P. Hitz
Legislative Counsel